

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 7, 2006

**STATE OF TENNESSEE, EX REL. BRENDA WIX v. MICHAEL WALLACE  
SHERROD**

**Circuit Court for Robertson County  
No. 4594**

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**No. M2005-01318-COA-R3-CV - Filed on October 16, 2006**

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In this appeal, the father's conviction of criminal contempt must be reversed because the State concedes it cannot demonstrate that the father was advised of his right to counsel and voluntarily waived it.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Reversed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Michael W. Sherrod, Springfield, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Warren Jasper, Assistant Attorney General, for the appellees, Tennessee Department of Human Services, Brenda Wix, and Paul G. Summers.

**MEMORANDUM OPINION<sup>1</sup>**

In this child support enforcement action, the father, acting pro se, appeals from an order finding him guilty of criminal contempt and sentencing him to ten days incarceration. Because the

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<sup>1</sup>Tenn. R. Ct.App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

State concedes that it cannot demonstrate that the father was properly advised of his right to counsel, we reverse.<sup>2</sup>

Michael Sherrod and Brenda Wix were divorced in 1988. The final decree of divorce awarded custody of the parties' minor child to Ms. Wix and required Mr. Sherrod to pay child support. Since that time, the parties have been involved in nearly constant litigation concerning custody and support, and the terms of the divorce decree have been modified several times.<sup>3</sup> The current dispute began in July of 2004 when the State of Tennessee *ex rel.* Brenda Wix filed a petition for criminal contempt alleging that Mr. Sherrod was in arrears \$3,384.99 for child support and \$673.72 for medical expenses.

The trial court heard the petition for contempt on May 26, 2005. Mr. Sherrod appeared at the hearing without counsel. No court reporter was present, and the State's trial counsel cannot certify that Mr. Sherrod was advised of his right to counsel and his right to be appointed counsel if he were determined to be indigent. On June 6, 2005, the trial court entered an order finding Mr. Sherrod guilty of criminal contempt and sentencing him to ten days in the Robertson County Jail. Mr. Sherrod filed his notice of appeal on June 3, 2005.

While Mr. Sherrod raises numerous issues on appeal, we need only address his claim that the trial court failed to advise him of his right to counsel and his right to be appointed counsel if he were determined to be indigent. The Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, section 9 of the Tennessee Constitution afford a defendant accused of criminal contempt the right to assistance of counsel. *Holt v. Virginia*, 381 U.S. 131, 136, 85 S.Ct. 1375, 14 L.Ed.2d 290 (1965); *Cottingham v. Cottingham*, 193 S.W.3d 531, 536 (Tenn. 2006).

In such cases, the trial court must make an inquiry on the record to ensure that a defendant is knowingly and intelligently waiving his or her right to assistance of counsel. *State v. Small*, 988 S.W.2d 671, 673 (Tenn.1999). The record before this court does not reflect that the trial court made such an inquiry. No transcript exists, and the State's trial counsel cannot certify in a statement of the evidence that such an inquiry was made. Accordingly, the State concedes error regarding this issue and requests that the matter be remanded to the trial court for dismissal of its petition or for rehearing. We agree that the error requires reversal of the conviction.

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<sup>2</sup>The father requested oral argument pursuant to Tenn. R. App. P. 35, and this court consolidated this appeal with a related appeal filed by the father, App. No. M2005-01106-COA-R3-CV, for the purpose of oral argument only. In light of the State's concession, however, oral argument in this appeal is unnecessary. Accordingly, we have elected to waive oral argument and decide this appeal on the record and briefs. Our decision shall have no effect on App. No. M2005-01106-COA-R3-CV, which shall proceed with oral argument in due course.

<sup>3</sup>The child turned eighteen in March of 2006.

In light of the State's concession, we reverse the contempt conviction and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs of the appeal to the State of Tennessee.

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PATRICIA J. COTTRELL, JUDGE